UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS BARBOSA, DECEASED, by and through his Co-Successors in Interest, LUPITA BARBOSA, individually and as mother and next friend for K.B. and T.B., minors; ANGELICA MARTINEZ-VERA, individually; and KATHLEEN HOOD, individually,

Plaintiffs,

v.

SHASTA COUNTY, a public entity, et al.,

Defendants.

No. 2:20-cv-02298-JAM-DMC

ORDER GRANTING WITH LEAVE TO AMEND DEFENDANT SHASTA COUNTY'S MOTION TO DISMISS

On February 4, 2020, unidentified Shasta County Sheriff's Office ("SCSO") deputies shot and killed Thomas Barbosa, a former Marine and Iraq War veteran suffering from Post-Traumatic Stress Disorder ("PTSD"). Compl. ¶ 21, ECF No. 1. This lawsuit followed. Plaintiffs are surviving family members of Mr. Barbosa: his wife, Lupita Barbosa, his biological children, K.B. and T.B., his stepdaughter, Angelica Martinez-Vera, and his mother, Kathleen Hood. Id. ¶¶ 3-6. Defendants are Shasta County

(the "County") which operates the SCSO and Shasta County Sheriff-Coroner Eric Magrini ("Magrini"). Id. ¶¶ 8-9.

Before the Court is the County's Motion to dismiss Plaintiffs' second claim for municipal liability under 42 U.S.C. § 1983 for failure to state a claim and to dismiss Plaintiffs' fourth, fifth, sixth, and seventh state law claims for failure to differentiate the allegations against the County from the other Defendants. Mot. to Dismiss ("Mot."), ECF No. 8. Plaintiffs filed an opposition, Opp'n, ECF No. 15, to which the County replied, Reply, ECF No. 17. For the reasons set forth below, the Court GRANTS WITH LEAVE TO AMEND the County's Motion to Dismiss.[1]

I. BACKGROUND

Around 12:38 p.m. on February 4, 2020, Lupita Barbosa called 911 to request a welfare check for her husband, Thomas Barbosa, whom she reported was breaking things around the house and appeared to be hallucinating. Compl. ¶ 22. Mr. Barbosa, a 41-year-old veteran, suffered from PTSD. Id. ¶ 20. Lupita told the 911 operator her husband needed help for his PTSD and specifically requested that an ambulance, not SCSO deputies, be sent. Id. ¶ 22. After placing the 911 call, Lupita and her two minor children left the house and got into a car. Id. ¶ 23. Mr. Barbosa followed them out of the house, telling Lupita he would drive behind them in his truck because he was concerned for her and the children's safety. Id. As Lupita was driving away, someone from the SCSO called her and instructed her to lead Mr.

[1] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for April 6, 2021.

Barbosa to a nearby auction yard where SCSO deputies would intercept him. Id. Lupita agreed to follow this plan, however, when she eventually pulled over at the auction yard, Mr. Barbosa noticed the SCSO deputies and drove away. Id.

A pursuit ensued. Id. ¶ 24. SCSO deputies along with a CHP helicopter tracked Mr. Barbosa as he drove down a rural highway and eventually drove up a small embankment to a steep cliff. Id. ¶ 25. He paused for a few minutes then drove off the cliff. Id. His truck rolled over a few times before stopping against a tree. Id. SCSO deputies found Mr. Barbosa alive and conscious but trapped in the truck. Id. The deputies believed Mr. Barbosa had a knife and that "jaws of life" would be needed to extract him from the truck. Id. Around 2:28 p.m., an unidentified deputy shot and killed Mr. Barbosa with a single round to the chest from a .223-caliber rifle. Id.

In response, Plaintiffs filed this civil rights, wrongful death, and survival action against Defendants. See generally Compl. While the complaint contains eight counts, the present Motion concerns only certain claims against the County Defendant: the second count for municipal liability under 42 U.S.C. § 1983, and the fourth, fifth, six, and seventh state law counts. Compl ¶¶ 40-46, 56-81. The County moves to dismiss these claims under Federal Rule of Civil Procedure 12(b)(6). Mot. at 4-15.

II. OPINION

A. Legal Standard

A Rule 12(b)(6) motion challenges the complaint as not alleging sufficient facts to state a claim for relief. Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss [under

12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted). While "detailed factual allegations" are unnecessary, the complaint must allege more than "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." Id. "In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009).

B. Analysis

1. Second Count: Monell Claim

The County first moves to dismiss Plaintiffs' second count – a Monell claim against the County based on (1) unconstitutional customs, policies, and practices, (2) failure to train, and (3) ratification – contending Plaintiffs' allegations as to this count are conclusory and lack sufficient factual matter to state a claim. Mot. at 4-10; Reply at 1-3.

Municipalities may be held liable under Section 1983 for constitutional injuries inflicted through a municipal policy or custom. Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 694 (1978). Among the ways a plaintiff may establish municipal liability is by demonstrating that: (1) the constitutional tort was the result of a longstanding practice or custom that constitutes the standard operating procedure of the local government entity; (2) an official with final policy-making

authority delegated that authority to, or ratified the decision of, a subordinate; or (3) the municipality failed to adequately train the tortfeasors. Price v. Sery, 513 F.3d 962, 966 (9th Cir. 2008) (internal quotation marks and citation omitted). To properly plead a Monell claim, plaintiff "may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." AE ex rel. Hernandez v. Cty. of Tulare, 666 F.3d 631, 637 (9th Cir. 2012) (internal citations omitted).

As an initial matter, Plaintiffs' counsel insists their method of pleading has been "repeatedly approved by judges in the Eastern and Northern Districts." Opp'n at 6. Yet, the authority Plaintiffs' counsel cites to and the legal standards applied therein, which counsel insists have also been met here, are not the applicable ones. For instance, Plaintiffs cite to Swierkiewicz v. Sorema, N.A., 534 U.S. 506 (2002) (applying the Conley notice pleading standard). Opp'n at 4. But, as the County points out, the notice pleading standard applied in Swierkiewicz was abrogated by the Supreme Court in Twombly and Iqbal and replaced by a stricter plausibility standard. Reply at 1. The Ninth Circuit too has been clear that the Twombly-Iqbal plausibility standard governs Monell claims. AE ex rel. Hernandez, 666 F.3d at 637. In short, the authority Plaintiffs rely on do not provide the relevant legal standard under which Monell claims are assessed. Rather, Plaintiffs' allegations must meet the applicable plausibility standard.

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a. Custom, Policy, or Practice

Plaintiffs' allegations regarding the County's unconstitutional customs, practices and procedures are set forth in paragraph 41 of the complaint. Compl. ¶ 41; see also Opp'n at 7-8 (referring the Court to ¶ 41(a-h)). The County argues these allegations are conclusory and lack sufficient factual content to state a claim. Mot. at 4-6.

When asserting a Monell claim based on an unconstitutional custom, policy, or practice, plaintiffs must set forth "more than a bare allegation that government officials' conduct conformed to some unidentified government policy or custom." AE ex rel. Hernandez, 666 F.3d at 637. As another Eastern District of California court has explained, conclusory statements "unsupported by any factual allegations as to what that 'policy, custom and practice' consists of, who established it, when, or for what purpose, [do] not sufficiently allege a basis for Monell liability." Lutz v. Delano U.S.D., No. 1:08-cv-01787, 2009 WL 2525760 at *5 (E.D. Cal. Aug. 7, 2009)(internal citations omitted).

Here, the Court finds the allegations contained in paragraph 41 of the complaint are improperly pled conclusory statements. See Iqbal, 556 U.S. at 679. Because Plaintiffs' "grab bag of allegations" regarding the County's customs, policies, and practices is unsupported with facts, Plaintiffs have not stated a plausible Monell claim. Kollin v. City of Tehachapi, No. 1:18-cv-00617, 2018 WL 4057491 at *5 (E.D. Cal. Aug. 24, 2018) (dismissing plaintiffs' Monell claim because the "grab bag of allegations concerning the City's policies" were not "supported

with facts").

b. Failure to Train

Plaintiffs' allegations regarding the County's failure to properly train SCSO deputies on how to engage with mentally ill individuals are principally set forth in paragraphs 23-26, 41(c-e), and 41(j) of the complaint. Compl. ¶¶ 23-26, 41; see also Opp'n at 10-11 (referring the Court to these paragraphs). The County again contends these allegations are conclusory and lack sufficient factual content to state a claim. Mot. at 6-7.

When asserting a Monell claim predicated on inadequate training, a plaintiff must allege the:(1) decedent was deprived of a constitutional right; (2) the policy amounts to deliberate indifference to constitutional rights of persons whom officers are likely to interact with; and (3) the constitutional injury would have been avoided had the officers been properly trained. Flores v. County of Los Angeles, 758 F.3d 1154, 1158-59 (9th Cir. 2014). Further, an Eastern District of California court has required plaintiffs to allege what the training practices were, how those practices were deficient, and how the training practices caused plaintiff's harm. Young v. City of Visalia, 687 F.Supp.2d 1141, 1149-1150 (E.D. Cal. 2009) (explaining that "without identifying the training . . . practices, how those practices were deficient . . . the Court cannot determine if a plausible claim is made for deliberately indifferent conduct.")

Here, Plaintiffs do not sufficiently describe what training SCSO deputies did or did not receive or how these practices were deficient, nor do they causally connect deficiencies in the training to Mr. Barbosa's death. Nor do Plaintiffs save their

failure to train claim by arguing that "sometimes a municipality's failure to supervise is self-evident by the facts of a single incident." Opp'n at 9. Indeed, the County has brought forward authority to the contrary, that courts can and do dismiss such claims "where a plaintiff alleged a single incident of unconstitutional conduct as the basis for their Monell claim." Reply at 2 (citing to Cain v. City of Sacramento, No. 2:17-cv-00848 2017 WL 4410116 at *3 (E.D. Cal. Oct. 3, 2017)). The single incident alleged here, namely the events leading to Mr. Barbosa's death, is insufficient to support Plaintiffs' failure to train claim. Accordingly, this claim is dismissed.

c. Ratification

Plaintiffs' allegations regarding the County's ratification of unconstitutional actions by SCSO deputies are set forth in paragraph 43 of the complaint. Compl. ¶ 43; see also Opp'n at 12 (referring the Court to ¶ 43). The County contends these allegations are conclusory and lack sufficient factual content to state a ratification claim. Mot. at 8-10.

When asserting a Monell claim based on ratification, a plaintiff "must allege facts that show that the authorized policymakers approve a subordinate's decision and the basis for it." Petre v. City of San Leandro, No. 15-cv-03344, 2016 WL 31637 at *7 (N.D. Cal. Jan. 4, 2016) (internal quotation marks and citations omitted). Alleging "a mere failure to overrule a subordinate's actions, without more, is insufficient." Lytle v. Carl, 382 F.3d 978, 987 (9th Cir. 2004). Likewise, alleging a "mere failure to discipline does not amount to ratification." Adomako v. City of Fremont, No. 17-cv-06386, 2018 WL 2234179 at

*3 (N.D. Cal. May 16, 2018).

Here, Plaintiffs' allegations do not contain facts showing the County approved of the unidentified SCSO deputies' actions and decisions. Rather, they merely state in conclusory terms that "authorized policy makers within Shasta County" "approved of the conduct and decisions of DOE Defendant" and "have made a deliberate choice to endorse such conduct and decisions, and the basis for them." Compl. ¶ 43. Contrary to Plaintiffs' insistence that these allegations are sufficient, the Court finds they are not.

In sum, because Plaintiffs have only alleged unsupported conclusory statements, they have not plausibly stated a Monell claim under any of the three theories they advance: unconstitutional customs, policies, and practices, failure to train, and ratification. Accordingly, their second count against the County is dismissed.

2. Fourth, Fifth, Sixth, and Seventh Counts

The County also moves to dismiss Plaintiffs' fourth through seventh state law counts as to any direct liability claim. Mot. at 10-15; Reply at 4-5. The County's leading argument is that for each of these counts, Plaintiffs have impermissibly lumped all Defendants together, failing to identify and differentiate the allegations of the County's wrongdoing from allegations against the other Defendants. Mot. at 10-12.[2] According to the

[2] The County raises two other arguments as to why any direct liability portion of these four counts should be dismissed. Mot. at 12-15. First, Defendant argues that with respect to the fifth count for negligence, sixth count for assault and battery, and seventh count for false arrest and imprisonment, Plaintiffs failed to allege which enactment imposes a mandatory duty upon

County, Plaintiffs "cannot simply group all defendants together in a count without some specification as to which defendant is responsible for which wrong." Mot. at 11. The Court agrees.

It is well-settled that "undifferentiated pleading against multiple defendants is improper." Corazon v. Aurora Loan Servs., LLC, No. 11-cv-00542, 2011 WL 1740099 at *4 (N.D. Cal. May 5, 2011) (internal citation and quotation marks omitted); see also Mot. at 11-12 (collecting cases). Rather, the complaint "must differentiate between each of the defendants and clearly state the factual basis for each cause of action as to each specific defendant." Fagbohungbe v. Caltrans, No. 13-cv-03801, 2014 WL 644008 at *6, n. 4 (N.D. Cal. Feb. 19, 2014).

Notwithstanding the ample authority the County brings forward in its Motion establishing the rule that undifferentiated pleading is improper, Plaintiffs again respond with inapposite authority. Opp'n at 13. Specifically, Plaintiffs cite to Conley v. Gibson, 355 U.S. 41 (1957), for the proposition that plaintiffs need only "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. As discussed above, however, the Supreme Court has overruled Conley and set aside Conley's less strict notice pleading

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the County as required to state a direct liability claim against the County. Mot. at 12-14. Second, Defendant argues that with respect to Plaintiffs' fourth count for violation of Cal. Civ. Code § 52.1, any direct liability claim against the County fails as a matter of law. Mot. at 14-15 (citing to Gonzalez v. County of Los Angeles, 2008 U.S. Dist. LEXIS 73003 (C.D. Cal. July 28, 2008)). The Court does not reach these additional arguments because it finds dismissal is warranted based upon Plaintiffs' failure to differentiate allegations of wrongdoing against the multiple Defendants.

standard, replacing it with plausibility standard set forth in Twombly and Iqbal.

Further, Plaintiffs' attempt to distinguish the present case from the County's long list of authority, see Mot. at 11-12, in which courts dismissed complaints for failure to identify each defendant's culpable conduct when pleading multiple claims against multiple defendants, fails. According to Plaintiffs, their complaint is distinct from Canales and the County's other cited authority because they have not lumped Defendants together under one broad allegation; rather, they have pled specific allegations of vicarious liability, see Compl. ¶¶ 62, 70, 74, 80. Opp'n at 13. Plaintiffs insist these vicarious liability allegations "resolve any possible confusion." Id.

This argument, however, mistakes the particular aim of the County's 12(b)(6) challenge: in the Motion itself, the County clearly states it "does not dispute that plaintiffs have sufficiently alleged a claim for the County's vicarious liability claim" and that it is only challenging any direct liability portion of these counts. Mot. at 14, fn.14; see also Reply at 4. Thus, the Court agrees with the County that Plaintiffs' vicarious liability allegations do not resolve the issue of whether plaintiffs' other allegations broadly lumping together "Defendants" are pleading direct liability claims against the County too. Reply at 4. Indeed, because Plaintiffs do not differentiate between each of the defendants and do not clearly state the factual basis for each claim as to each specific defendant, the Court cannot determine if a direct liability claim against the County has been asserted in counts four through seven

or if Plaintiffs are only bringing vicarious liability claims with respect to these counts. Because this kind of undifferentiated pleading against multiple Defendants is improper, any direct liability portion of counts four through seven as to the County must be dismissed.

Plaintiffs' additional arguments do not change this analysis. First, Plaintiffs contend that they are unable to further differentiate their allegations of wrongdoing because the County has not provided them with information about the identities of involved officers or agents. Opp'n at 13. But as the County points out, Plaintiffs need only separate the County from the individual defendants as they did in their federal claims. Reply at 5. Second, Plaintiffs argue that requiring amendment "would be an exercise in pure formalism without any practical purpose." Opp'n at 15. The Court disagrees. As currently pled, neither this Court nor the County can determine whether counts four through seven include a direct liability claim against the County in addition to a vicarious liability claim. Thus, amendment would serve at least two practical purposes: providing notice to the County of whether they must defend against direct liability claims and facilitating this Court's ability to determine whether a plausible direct liability claim has been stated.

C. Leave to Amend

Courts dismissing claims under Federal Rule of Civil Procedure 12(b)(6) have discretion to permit amendment, and there is a strong presumption in favor of leave to amend. Eminence Cap., LLC v. Aspeon, Inc., 316 F.3d 1048, 1051-52 (9th Cir.

2003). "Dismissal with prejudice and without leave to amend is not appropriate unless it is clear . . . that the complaint could not be saved by amendment." Id. at 1052 (internal citation omitted).

Here, Plaintiffs seek leave to amend the complaint. See Opp'n at 15. Since it may be possible for Plaintiffs to cure the above-described deficiencies, the Court will grant them an opportunity to rectify the errors in their dismissed claims and file a First Amended Complaint. Any amended complaint, however, should contain facts that sufficiently show plausible causes of action.

III. ORDER

For the reasons set forth above, the Court GRANTS WITH LEAVE TO AMEND Defendant Shasta County's Motion to Dismiss. If Plaintiffs elect to amend their complaint, they shall file a First Amended Complaint within twenty days (20) of this order. The County's responsive pleading is due twenty days thereafter.

IT IS SO ORDERED.

Dated: April 26, 2021

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE